Supreme Court, U.S.
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No. 05- 05-91

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IN THE

Supreme Court of the United States

ALLEGHENY COUNTY PRISON EMPLOYEES INDEPENDENT UNION; CHARLES MANDERINO, individually and on behalf of the Members of ACPIEU,

Petitioners,

v.

COUNTY OF ALLEGHENY; CALVIN A. LIGHTFOOT, WARDEN, ALLEGHENY COUNTY JAIL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioners are correction officers employed at the Allegheny County Jail. When they report for work, a minimum of four employees, including correction officers, are randomly selected and searched using pat search procedures modeled after clothed inmate body searches. The search procedures challenged by the petitioners involve reaching well up into a clothed individual's groin, running the hands up the crease between the buttocks and touching a female guard's breasts. The question presented is:

Whether the challenged search procedures are reasonable under the Fourth Amendment when the record does not document that any correction officer has secreted drugs, weapons or other contraband into the Jail by concealing these items in the groin, the crease between the buttocks, under a bra, or otherwise.

LIST OF PARTIES

The petitioners are the Allegheny County Prison Employees Independent Union and Charles Mandarino, plaintiffs in the District Court and appellants in the Court of Appeals.

The respondents are the County of Allegheny and Calvin A. Lightfoot of warden of the Allegheny County Jail at all times relevant to this action.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
List of Parties	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	v
Opinion Below	1
Statement of Jurisdiction	1
Constitutional Provision Involved	1
Statement of the Case	1
A. Facts Material to the Question Presented	1
Proceedings Below	6
Reasons for Granting the Petition	6
I. The Question Presented Is Important	6
A. The Record Does Not Support The Finding That The Challenged Search Procedures Are Reasonable	7
Conclusion	10

TABLE OF CITED AUTHORITIES

Page

Cases:

Bell v. Wolfish, 441 U.S. 520 (1979) 6, 7, 8, 9

Bradley v. United States, 299 F.3d 197 (3d Cir. 2002) 8, 9

Security and Law Enforcement Employees v. Carey, 717 F.2d 187 (2dCir. 1984) 8, 9

United States Constitution:

Fourth Amendment ..... *passim*

Statutes:

28 U.S.C. § 1254(1) 1

42 U.S.C. § 1983 3

Rule:

Fed. R. Civ. P. 65 3

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Third Circuit Filed March 21, 2005 ..... 1a

Appendix B — Order Dated March 18, 2004 And Memorandum Order Dated February 4, 2004 Of The United States District Court For The Western District Of Pennsylvania 5a

Appendix C — Order Of The United States Court Of Appeals For The Third Circuit Denying Petition For Rehearing Dated April 18, 2005 ..... 31a

Appendix D — Administrative Directive #54 Dated August 22, 2003 ..... 33a

OPINION BELOW

The Memorandum Opinion of a Panel of the Court of Appeals for the Third Circuit, filed March 21, 2005, is unpublished (App. A). The Order of the District Court, dated March 18, 2004 is also unpublished (App. B).

STATEMENT OF JURISDICTION

The Court of Appeals entered an Order on April 18, 2005 (App. C) denying the petitioners timely Petition for Rehearing by the Panel and the Court en banc. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Amendment IV of the United States Constitution

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. Facts Material to the Questions Presented

The petitioners are the Allegheny County Prison Employees Independent Union, the bargaining unit for correction officers employed at the Allegheny County Jail by the County of Allegheny and the members of the union.

Petitioner Charles Manderino is the president of the bargaining unit and a correction officer. Respondents are the County of Allegheny and Calvin A. Lightfoot (Lightfoot) who at all times relevant to this action was the warden of the Allegheny County Jail.

In May, 1997, Lightfoot issued Administrative Directive #54 titled Employee Search Procedures (Ad. Dir. #54). It provided in relevant part that a minimum of four employees be searched when each oncoming shift began by having the individuals remove all items from his/her pockets as well as shoes. A pat search of the clothed individual was then to be made. The scope of the pat search was not defined in the Directive and was never challenged by the petitioners. This search procedure remained unchanged until July 11, 2003 when a new Ad. Dir. #54 was issued.

The July 11, 2003 Directive provided in relevant part that a minimum of four employees, contracted employees, volunteers or any other persons entering the jail through the employee entrance would be subject to random searches of their bodies. This Directive further provided that the individuals selected to be searched must empty all items in his/her pockets for examination; shoes, socks and belts would be removed and a pat search would then be conducted. The scope of the pat search was not defined in the Directive, i.e. the parts of an individual's body that were to be pat searched.

On August 22, 2003, Lightfoot issued a third version of the Ad. Dir. #54 that was based on search procedures to be used for clothed inmate searches. Two of the Directive's provisions were specifically challenged by the petitioners in the Courts below and are at issue in this Petition. They

provided detailed instructions for the scope of pat searches of individuals selected to be searched:

> Reach well up into the selected individual's groin area from between the legs. Inspect the groin and run your hands up the crease between the buttocks. This area is to be inspected firmly but gently. The groin is the most neglected area to be searched. It can be embarrassing for staff. Staff is unsure about touching this area and for that reason it's the one area that is most likely to hide contraband.
>
> If there is reason to suspect that contraband is concealed under the bra of a female who is being searched, the female will be removed to a private location for further search up to and including strip search.

(App. D, *infra* at 36a-37a).

Upon implementation of Ad. Dir. #54 dated July 11, 2003, the petitioners filed a complaint pursuant to 42 U.S.C. § 1983 and a motion for temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. They contended the Directive violated their Fourth Amendment rights because the pat searches were undertaken without probable cause or reasonable suspicion. The Section 1983 complaint is not at issue.

On July 17, 2004 an evidentiary hearing was held on petitioners' temporary restraining order. The District Court precluded the County and Lightfoot from taking disciplinary action against petitioners for refusing to be searched but

permitted non-intrusive pat searches that included requiring the removal of shoes and belts.

The respondents filed an answer to the petitioners' complaint claiming the search procedures were constitutional because correction officers have a diminished expectation of privacy and the search procedures were justified as a means of preventing contraband from being introduced into the jail.

Lightfoot testified at the July 17, 2003 evidentiary hearing as follows regarding the conduct of the petitioners in terms of introducing drugs or weapons into the jail since he became warden in 1997. He testified no correction officer had been discovered bringing a gun, knife or drugs into the jail; he could not recall any officer having been disciplined for having contraband in the nature of a weapon or drugs; and, he had not received any information from police or inmates that guards were dealing in contraband. Lightfoot also testified records existed of contraband recovered from individuals, including correction officers, entering the jail through the employee entrance but he was not familiar with them.

In support of his July 11, 2003 revision of Ad. Dir. #54 Lightfoot offered the following testimony. In his opinion 98 percent of the jail employees weren't involved in contraband but a small element was; he referred to certain employees as weak and bad; and, he pointed to the discovery of five ounces of marijuana found in the jail library but did not relate this contraband to any correction officer.

After Ad. Dir. #54 was revised on August 22, 2003, petitioners filed an amended complaint challenging the

portions of the Directive identified, *supra*, as violative of their Fourth Amendment rights.

A second evidentiary hearing was held on October 28, 2003. Witnesses called by the respondents testified as follows. Major James J. Donis indicated that pursuant to Ad. Dir. #54 dated August 22, 2003 the person conducting a groin search would have to bump up against a male's testicles, make contact with a male's testicles or penis to make a complete search for contraband. The Major further testified that in the three months preceding the October 28, 2003 hearing employees had been found with cigarettes, "nuisance" things like playing cards and a correction officer had a Nintendo Game Boy on his body. He also testified coffee, tea bags and more playing cards had been recovered from employees. He did not specify which items recovered in searches of employees had been recovered from correction officers, other than the Game Boy, nor where the items had been found on the employees' bodies.

Lightfoot did not testify at the October 28, 2003 hearing to explain or justify why Ad. Dir. #54 had been revised as of August 22, 2003. Further, none of the records he testified were made since 1997 documenting contraband recovered from searches made of people using the employee entrance were offered into evidence. The only evidence of drugs being seized during a search involved an attorney who came into the jail through a visitor's entrance. Lightfoot's July 17, 2003 testimony was incorporated into the record.

PROCEEDINGS BELOW

On February 4, 2004, the District Court entered a Memorandum Order denying the petitioners' Motion for preliminary injunction. (App. B, *infra*, at 30a). At a status conference held on March 15, 2004, the parties through counsel agreed there was no need for further hearings, arguments or submissions on whether the petitioners should be granted a permanent injunction. The District Court entered an Order dated March 18, 2004 (App. B, *infra* at 5a) denying a permanent injunction consistent with the reasoning of its February 4, 2004 Memorandum Order.

On April 7, 2004, petitioners filed a Notice of Appeal. In an Opinion filed March 21, 2005, the United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court. (App. A, *infra*, at 1a).[1]

Petitioners timely filed a Petition for Rehearing and Suggestion for Rehearing En Banc which was denied by Order dated April 18, 2005. (App. C, *infra* at 31a).

REASONS FOR GRANTING THE PETITION

I. The Question Presented Is Important

In *Bell v. Wolfish*, 441 U.S. 520 (1979), this Court addressed issues of institutional security in a corrections facility as they related to the claims of inmates that their Fourth Amendment rights had been violated. The principles set forth in *Wolfish* apply to the instant petition.

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1. Because the Court of Appeals affirmed without restating the facts and affirmed the District Court's holding for "essentially the reasons" set forth in its "thorough Memorandum Order of February 4, 2004," reference will be made to that Order hereafter. (App. A, *infra*, at 3a).